



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 08-08176
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

February 27, 2009

**Decision**

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is denied.

On March 28, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for his job with a defense contractor, for whom he works as a truck driver. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant written interrogatories<sup>1</sup> regarding adverse financial information in his background. After Applicant responded to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the

<sup>1</sup> As authorized by the DoD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by the Directive, Section E3.1.1.

national interest to continue Applicant's access to classified information. On October 29, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>3</sup> under Guideline F (financial considerations). Applicant timely responded to the SOR and requested a decision without a hearing. On January 16, 2009, Department Counsel prepared a File of Relevant Material (FORM)<sup>4</sup> in support of the government's preliminary decision. Applicant received the FORM on February 1, 2009, and timely responded to it. The case was assigned to me on February 20, 2009.

### **Findings of Fact**

The government alleged Applicant and his wife filed for Chapter 7 bankruptcy in August 2008, and that they disclosed liabilities of approximately \$428,583. (SOR ¶ 1.a) Applicant admitted the allegation without explanation. (Items 1 and 3) In addition to the facts entered in the record through Applicant's admission, I make the following findings of relevant fact.

Applicant is a 59-year-old truck driver for a company doing business with the Department of Defense. He has held his current job since March 2008, but was employed as a driver with another company from August 1997 until March 2008. (FORM, Item 7) When Applicant submitted his application for a security clearance, he listed seven delinquent credit card accounts totaling approximately \$115,973. (FORM, Item 7) A credit bureau report obtained during Applicant's background investigation (FORM, Item 9) revealed additional delinquent accounts. The accounts in question were opened between 2003 and 2007, with most becoming past due or delinquent in the past two years. The same document shows Applicant has remained current on other accounts such as his mortgage and car payments.

In response to written interrogatories about his debts, he submitted a copy of a recent pay stub, and a personal financial statement (PFS) showing a net monthly remainder after expenses of about \$733. He also submitted a copy of a Chapter 7 bankruptcy petition he and his wife filed on August 22, 2008. In that petition, they declared \$428,583.79 in liabilities against \$254,615 in assets. (FORM, Item 8) It appears from a review of information in the bankruptcy petition, which lists a trade or business name along with certain types of personal property used as collateral for creditors' secured claims, that Applicant and his wife may have been in business for themselves recently. However, it is unclear how, if at all, any of the unpaid debts listed in Schedules E and F were related to possible business ventures. Further, the information presented in the petition about their income versus expenses shows that, as

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<sup>3</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the government's case.

of the bankruptcy filing, Applicant and his wife actually had a negative monthly cashflow. (FORM, Item 8)

According to the DOHA interrogatories, Applicant was interviewed by a government investigator in May 2008. However, there is no information in the record about the results of that interview that may have shed some light on Applicant's circumstances. Nor did Applicant provide any amplifying information with her admission to the single SOR allegation. In response to the FORM, Applicant stated only he had nothing new to add, that he could not afford an attorney to help him, and that he was working to overcome his financial problems. He also alluded to unspecified bad business decisions that (presumably) caused his debts.

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).<sup>5</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factor are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>6</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able

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<sup>5</sup> Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup> A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.<sup>8</sup>

## Analysis

### Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The government presented sufficient information to support the allegation in SOR ¶ 1.a. Further, Applicant admitted the allegation without explanation. The presence of recent unpaid debt and an apparent inability to pay require application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Additionally, the sheer volume of debt owed through personal credit card accounts suggests that Applicant may have been irresponsible in his spending habits. Such would require application of the disqualifying condition at AG ¶ 19(b) (*indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*).

In response, Applicant has provided no information that would support application of any of the mitigating conditions listed under AG ¶ 20. It would have been helpful to have more investigative information about the origin and/or current status of Applicant's debts. As to his current and future financial prospects, his PFS reflects a significant positive cash flow each month; however, the bankruptcy petition shows a negative monthly cashflow. Regardless, the government established that Applicant has incurred significant unpaid personal debt. This was sufficient to support the government's preliminary decision to deny Applicant's request for a clearance. Thus,

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<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

the burden shifted to the Applicant to present sufficient information to mitigate the security concerns raised by the facts established through the SOR. Applicant had two opportunities to present that information – when he responded to the SOR and/or when he responded to the FORM. Applicant’s resolution of his debts through bankruptcy, without more information about, for example, the causes of the debts, his current finances, and the prospects for his finances in the future, is not enough to overcome the government’s concerns about Applicant’s suitability.

**Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). However, aside from the fact of Applicant’s age and personal history, there is no available information aside from the fact of his recent financial problems that would support application of any of the whole person factors. As such, significant doubts remain about Applicant’s suitability for access to classified information. A fair and commonsense assessment<sup>9</sup> of all available information bearing on Applicant’s finances shows he has failed to address satisfactorily the government’s doubts about his ability or willingness to protect the government’s interests as his own. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.<sup>10</sup>

**Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

**Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant’s request for a security clearance. Eligibility for access to classified information is denied.

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MATTHEW E. MALONE  
Administrative Judge

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<sup>9</sup> See footnote 5, *supra*.

<sup>10</sup> See footnote 8, *supra*.